TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 108.

JAMES F. WHITNEY, HENRY BUSCHMANN AND CHARLES S. WHITNEY, PLAINTIFFS IN ERROR,

vs.

WILLIAM H. ROBERTSON, COLLECTOR OF THE PORT OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 16, 1884.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, NOVEMBER 18, 1887.

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court before you or some of you, between James F. Whitney, Henry Buschmann, and Charles S. Whitney and William H. Robertson, collector of the port of New York, a manifest error hath happened, to the great damage of the said James F. Whitney, Henry Buschmann, and Charles S. Whitney, as is said and as appears by their complaint, we, being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the third Monday of October term next, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this twenty-sixth day of September, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States the one hundred and —.

[Seal of U. S. Circuit Court, South. Dist. New York.]

TIMOTHY GRIFFITH,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

Allowed by—
WM. J. WALLACE.

2 [Endorsed:] United States Supreme Court. James F. Whitney *et al.*, plaintiffs in error, against William H. Robertson, collector of the port of New York, defendant in error. Writ of error. Ch's Stewart Davison, proctor for pl'ffs in error, 33 Wall street, New York city. U. S. circuit court. Filed Sep. 26, 1884. Timothy Griffith, clerk.

Due service of a copy of the within writ of error admitted.
Dated 26th Sept., 1884.

ELIHU ROOT,
Attorney for Defendant in Error.

UNITED STATES OF AMERICA, }
Southern District of New York, } ss:

I, Timothy Griffith, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from three to thirty-two, inclusive, contain a true and complete transcript of the records and proceedings had in said court in the case of James F. Whitney, Henry Buschmann, and Charles S. Whitney, plaintiffs in error, against William H. Robertson, collector of the port of New York, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this thirtieth day of September, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States the one hundred and ninth.

[Seal of U. S. Circuit Court, South. Dist. New York.]

TIMOTHY GRIFFITH, *Clerk.*

3 United States Circuit Court for the Southern District of New York.

JAMES F. WHITNEY, HENRY BUSCHMANN, & CHARLES S. WHITNEY

against

WILLIAM H. ROBERTSON, Collector of the Port of New York.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiffs' attorneys within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear or answer judgment will be taken against you by default for the relief demanded in the complaint.

Witness the Honorable Morrison R. Waite, Chief Justice of Supreme Court of the United States, at the city of New York, this 20th day of April, in the year one thousand eight hundred and eighty-three.

[L. S.] (S'g'd) TIMOTHY GRIFFITH, *Clerk.*

ULLO & DAVISON,
Plaintiffs' Attorneys.

Office and post-office address: 55 Beacon street, New York city.

4 (Endorsed:) United States circuit court, southern district of New York. James F. Whitney & *al. vs.* Wm. H. Robertson, coll'r, etc. Summons. Ullo & Davison, plaintiffs' attorneys. U S. circuit court. Filed Sept. 12, 1884. Timothy Griffith, clerk.

UNITED STATES OF AMERICA,
Southern District of New York, } ss:

I hereby certify that on the 20th day of April, 1883, at the city of New York, I personally served the within summons on the within-named defendant, William H. Robertson, by showing him the same and delivering to and leaving with him a true copy thereof.

JOEL B. ERHARDT,
U. S. Marshal.

Complaint.

United States Circuit Court for the Southern District of New York.

JAMES F. WHITNEY, HENRY BUSCHMANN, and CHARLES S. WHITNEY, Plaintiffs,
ag'st
WILLIAM H. ROBERTSON, Collector, etc., Defend't. } No. 8524.

The plaintiffs above named, by Charles Stewart Davison, their attorney herein, for their complaint respectfully show to this honorable court as follows:

First. That at all times during the year 1882 the plaintiffs have been and they still are copartners doing business in New York under the firm name or style of J. F. Whitney & Co., and during the same time the defendant was and still is collector of the port of New York.

Second. That during the same time the Dominican Re-
6 public was and still is an independent sovereignty, between whom and the United States of America there then existed and still exists a treaty, duly ratified and proclaimed, and to carry which into operation the necessary laws of Congress were passed, and whereby it is, among other things, provided in article IX thereof that "no higher or other duties shall be imposed on the importation into the United States of any article the growth, produce, or manufacture of the Dominican Republic * * * than are or shall be payable on the like articles being the growth, produce, or manufacture of any other country."

Third. That during the same time there was and there still is another foreign country, known as the Hawaiian Islands, constituting the dominions of His Majesty the King of the Hawaiian Islands, between whom and the United States of America there then existed and
7 still exists a treaty, which was duly ratified and proclaimed, and to carry which into effect an act of Congress was passed on the 15th day of August, 1876, and whereby the United States agreed to admit, and pursuant to which the United States has admitted, and still does admit, into all the ports of the United States muscovado, brown, and other unrefined sugars and syrups, and syrups of sugar cane, melado, and molasses, being the produce and manufacture of the said Hawaiian Islands, free of duty.

Fourth. That heretofore, to wit, on or about the 23rd day of August, 1882, the plaintiffs imported at the port of New York from

the said Dominican Republic, per the barque or vessel "Florence," certain centrifugal and molasses sugars, which were the produce and manufacture of said Republic, to wit, twenty-eight hundred and forty-six bags and eighty hogsheads centrifugal and thirty-
8 two bags and forty hogsheads molasses sugar, as per the invoices thereof, and all of which sugars were like articles to the sugar produced in the Hawaiian Islands, which so have been and are admitted to the ports of the United States free of duty under and pursuant to said treaty with that country and said act to carry the same into effect, and the same were of such kinds and grades that if they had been produced or manufactured in the Hawaiian Islands instead of the Dominican Republic they would have been admitted to the ports of the United States free of duty under said Hawaiian treaty and act of Congress.

Fifth. That on the date last mentioned the plaintiffs duly entered all of said sugars at the custom-house at said port, and duly made their claim to have the same entered free of duty.

9 Sixth. That thereafter the said defendant made his decision as to the rate and amount of the duties to be paid on such merchandize and the dutiable costs and charges thereon.

Seventh. That thereafter, and within ten days after the ascertainment and liquidation of the said alleged duties by the said defendant, the said plaintiffs, being dissatisfied with the said decision, gave notice in writing to said defendant on such entry, setting forth therein distinctly and specifically the grounds of their objection thereto, as appears from the said written protest, a copy whereof is hereunto annexed and made a part hereof and marked Exhibit "A."

Eighth. That subject to such protest and in order to obtain possession of such merchandize imported by them, and before the date of the decision of the Secretary of the Treasury on the ap-
10 peal hereinafter mentioned, the said plaintiffs paid to the said defendants the amounts so ascertained and liquidated as the amount alleged to be payable as duties on such merchandize, as appears, together with certain other particulars, in relation to said sugars in the bill of particulars in this case duly made by these plaintiffs, and a copy whereof is hereunto annexed and made a part hereof and marked "B," but that such rate and amount of duties was not authorized by law.

Ninth. That within thirty days after the date of such ascertainment and liquidation the said plaintiffs duly appealed therefrom to the Secretary of the Treasury.

Tenth. That thereafter the said Secretary of the Treasury made his decision denying such appeal, and these plaintiffs there-
11 upon, and within the time therefor limited by the statute in such cases made and provided, brought this their action in this court to recover such excess of duties exacted, to wit, the whole thereof.

Wherefore the plaintiffs pray judgment against the said defendant for the sum $21,936.61, together with their costs of this action.

(S'g'd) CH'S STEWART DAVISON, *Pl'ffs' Att'y.*

12 "A."

We hereby protest against the liquidation of our entry made August 23rd, 1882, of 2,878 bags and 120 hhds. sugar imported by us in the b'k "Florence" from Azua and warehoused by us on that date and your assessment of duties thereon, amounting to $21,936.61, entry No. 110,936, bond No. 22427, because of a treaty with the Hawaiian Islands and an act of Congress relative thereto, admitting sugar, the growth of the Hawaiian Islands, free of duty into the port of San Francisco after the 19th day of Sept., 1876. We claim that under treaty stipulations existing with San Domingo their products should be admitted into the ports of the United States on as favorable terms as the products of other countries.

The first clause of the 8th section of the 1st article of the Constitution of the United States declares that all duties, imports,
13 and excises shall be uniform throughout the United States, and the 5th clause of the 9th section of the same article declares that no preference shall be given to any regulation of commerce or the revenues of one State over those of another. Upon these grounds we base our protest and claim that the sugars described in this protest shall be admitted into this port free of duties, and we have paid the duties demanded to get possession of our goods and claim a refund of the same upon the grounds above stated.

4th September, 1882.

14 U. S. Circuit Court, Southern District of New York.

JAMES F. WHITNEY *et al.* *ag'st* WILLIAM H. ROBERTSON. } "8524."

To Elihu Root, Esq., United States attorney, attorney for defendant, post-office b'l'd'g, N. Y. city:

A bill of the particulars of the plaintiffs' demand in the above-entitled suit is as follows:

The suit is for the recovery of duties alleged to have been erroneously or illegally or erroneously exacted by the defendant, collector of customs of the port of New York.

The names of the importers are James F. Whitney, Henry Buschmann, and Charles S. Whitney.

15 The description of the merchandize is 2,846 bags centrifugal sugar, weighing, as per invoice, 690,110 lbs. (462 hhds.)

80 hhds. centrifugal sugar, weighing, as per invoice, 128,000 lbs.

32 bags molasses sugar, weighing, as per invoice, 6,500 lbs. (4 hhds.)

40 hhds. molasses sugar, weighing, as per invoice, 70,000 lbs.

The place from which imported is "Azua," in San Domingo.

The name of the vessel in which imported is the barque "Florence."

The date of the invoice is August 2nd, 1882.

The date of the entry at the custom-house is August 23rd, 1882.
The precise amount of duties claimed to have been exacted in excess is $21,936.61.
The date of the payment of said duties September 1st, 1882.
The day and year on which protest was filed against the exaction thereof is September 4th, 1882.
The date of the appeal therefrom to the Secretary of the Treasury is September 4th, 1882.
16 The date of the decision on such appeal is 23rd January, 1883.

Yours, &c.,
(S'g'd) ULLO & DAVISON,
Pl'ffs' Att'ys.

Dated 25th May, 1883.

(Endorsed:) U. S. circuit court, southern district of New York. James F. Whitney *et al.* ag'st William H. Robertson, collector, etc. Complaint. Ch's Stewart Davison, attorney for pl'ffs, 33 Wall street, New York city. U. S. circuit court. Filed Sept. 15, 1883. Timothy Griffith, clerk.

17 United States Circuit Court, Southern District of New York.

JAMES F. WHITNEY, HENRY BUSCHMANN, and CHARLES S. WHITNEY
vs.
WILLIAM H. ROBERTSON. } 8524.

The defendant above named, by Elihu Root, U. S. attorney, attorney for the defendant in the above-entitled action, demurs to the plaintiffs' complaint in the above action—
First. Upon the ground that it does not state facts sufficient to constitute a cause of action against the defendant therein.
Second. Upon the ground that the above-entitled court has no jurisdiction over the cause of action alleged in said complaint against said defendant.

(S'g'd) ELIHU ROOT,
U. S. Attorney, Attorney for Def't.

18 Office and P. O. address: Room 50, P. O. building, New York city.

(Endorsed:) U. S. circuit court, southern district of New York. 8524. James F. Whitney, Henry Buschmann, and Charles S. Whitney *versus* William H. Robertson. Demurrer. Elihu Root, United States attorney, attorney for defendant. U. S. circuit court. Filed Sept. 25, 1884. Timothy Griffith, clerk.

Due service of a copy of the within hereby admitted.
New York, Sept. 15, 1884.
(S'g'd) C. STEWART DAVISON,
Pl'ffs' Att'y.

19 WHITNEY *et al. vs.* ROBERTSON.

WALLACE, *J.:*

The questions raised by the demurrer are the same considered in the case of Bartram *vs.* Robertson, 15 Fed. Rep., 212, and for the reasons stated in the opinion then delivered the demurrer should be sustained.

Judgment is ordered for def't.

(Endorsed:) Whitney & *al. vs.* Robertson. Opinion. Wallace, J. Filed Sept. 19th, 1884.

20 At a stated term of the United States circuit court for the southern district of New York, held at the United States court-house, in the city of New York, this 23 day of September, A. D. 1884.

Present: Hon. William J. Wallace, circuit judge.

Order Sustaining Demurrer.

JAMES F. WHITNEY *et al. vs.* W. H. ROBERTSON.

This action having been brought to trial on the issue of law joined herein, after hearing Elihu Root, United States attorney, in support of the demurrer, and Ch's Stewart Davison, Esq., in opposition, ordered, That the demurrer be sustained and that defendant have judgment thereon, together with costs, to be taxed by the clerk of this court.

(S'g'd) WM. J. WALLACE.

21 A copy.

[Seal U. S. Circuit Court, S. D. of N. Y.]

TIMOTHY GRIFFITH, *Clerk.*

Form of the above order approved.

(S'g'd) CH'S STEWART DAVISON, *Pl'ffs' Att'y.*

(S'g'd) ELIHU ROOT, *U. S. Att'y.*

(Endorsed:) U. S. circuit court, southern dist. of New York. James F. Whitney & *al. vs.* William H. Robertson. Proposed order. U. S. circuit court. Filed Sept. 25, 1884. Timothy Griffith, clerk.

22 *Judgment.*

United States Circuit Court, Southern District of New York.

JAMES F. WHITNEY & *al. vs.* WILLIAM H. ROBERTSON.

The issues of law joined in this action having been brought on for trial before Mr. Judge Wallace, at a circuit court of the April term, 1884, and the issues having been tried and a verdict for the defend-

ant having been duly rendered on the twenty-third day of September, 1884, and his costs having been adjusted at $24.51—

Now, on motion of Elihu Root, United States attorney, for defendant, it is adjudged that the defendant have judgment against the plaintiffs upon the issues in this action, and that he recover the sum of $24.51, his taxed costs, and have execution therefor.

Judgment signed this 25th day of Sept'r, 1884.

(S'g'd) TIMOTHY GRIFFITH, *Clerk.*

23 (Endorsed over all:) 8524. United States circuit court. James F. Whitney & *al. vs.* William H. Robertson. Judgment roll. Elihu Root, United States attorney, for defendant. Costs, $24.51. U. S. circuit court. Filed Sept. 25, 1884, 11 a. m. Timothy Griffith, clerk.

24 Supreme Court of the United States, of October Term, in the Year A. D. 1884.

JAMES F. WHITNEY, HENRY BUSCHMANN, & CHARLES S. WHITNEY, Pl'ffs in Error,

ag'st

WILLIAM H. ROBERTSON, Collector, &c., Def't in Error.

In error.

Afterwards, to wit, on the third Monday in said term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said James F. Whitney, Henry Buschmann, and Charles S. Whitney, by Charles Stewart Davison, their attorney, and say that in and by the record aforesaid their is manifest error in this, to wit: That by the record aforesaid it

25 appears that the judgment aforesaid was given for the said defendant in error against the said plaintiffs in error, whereas by the law of the land the said judgment ought to have been given for the said plaintiffs in error against the said defendant in error, and the said plaintiffs in error pray that the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that they, the plaintiffs in error, may be restored to all things which they have lost by reason of said judgment.

CHAS. STEWART DAVISON,
Attorney for Pl'ffs in Error, 33 Wall Street, New York City.

(Endorsed:) U. S. Supreme Court. James F. Whitney *et*

26 *al.*, pl'ffs in error, ag'st William H. Robertson, collector, &c., def't in error. Assignment of error. Chas. Stewart Davison, proctor for pl'ffs in error, 33 Wall street, New York city. U. S. circuit court. Filed Sept. 26, 1884. Timothy Griffith, clerk.

Due service of a copy of the within assignment of error admitted. Dated 26th Sept., 1884.

ELIHU ROOT,
Attorney for Defendant in Error.

27 Supreme Court of the United States.

JAMES F. WHITNEY, HENRY BUSCHMAN, CHARLES S. WHITNEY,
ag'st
WM. H. ROBERTSON. } 8524.

Afterwards, to wit, on the third Monday in said term, the said defendant in error, by Elihu Root, his attorney, comes here into court and says that there is no error either in the record or proceedings aforesaid or in the giving of the judgment aforesaid, and he prays that the said Supreme Court, before the justices thereof now here, may proceed to examine as well the records and proceedings aforesaid as the matters aforesaid above assigned for error, and that the
28 judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

ELIHU ROOT,
Attorney for Defendant in Error.

(Endorsed:) James F. Whitney *et al.*, plaintiffs in error, *versus* Wm. H. Robertson, def't in error. Joinder in error. Elihu Root, United States attorney, attorney for defendant in error. U. S. circuit court. Filed Sept. 26th, 1884. Timothy Griffith, clerk.

Due service of a copy of the within is hereby admitted.
New York, 26th September, 1884.

CH'S STEWART DAVISON,
Attorney for Plaintiffs in Error.

29 *Bond for Damages and Costs.*

Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

JAMES F. WHITNEY, HENRY BUSCHMANN, & CHARLES S. WHITNEY,
Plaintiffs in Error,

vs.

WILLIAM H. ROBERTSON, Collector of the port of New York, Def't.

Know all men by these presents that we, Manuel Rionda and Hugh P. Kelly, are held and firmly bound unto the above-named William H. Robertson, collector of the port of New York, in the sum of one hundred dollars, to be paid to the said William H. Robertson; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the sixteenth day of September, in the year of our Lord one thousand eight hundred and eighty-four.

Whereas the above-named James F. Whitney, Henry Buschmann, and Charles S. Whitney have prosecuted a writ of error to the

Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named James F. Whitney, Henry Buschman, and Charles S. Whitney shall prosecute the said writ of error to effect and answer all damages and costs if they fail to make their plea good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

MAN'L RIONDA.
HUGH KELLY.

Sealed and delivered and taken and acknowledged this 16 day of September, 1884, before me—

[L. S.] WILLIAM P. LEGGATT.

30 [Endorsed:] Vol. — page —. U. S. circuit court, south. dist. of New York. James F. Whitney *et al. vs.* William H. Robertson, collector, &c. Bond for costs on appeal. Ch's Stewart Davison, 33 Wall street, New York city, proctor for pl'ffs. Filed this — day of ——, 18—.

Within bond approved as to form and sufficiency of sureties.
WM. J. WALLACE.

Due service of a copy of the within bond admitted.
Dated 26th Sept., 1884.

ELIHU ROOT,
Attorney for Defendant.

UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

Manuel Rionda and Hugh P. Kelly, being duly sworn, do depose and say, each for himself, that he is worth the sum of two hundred dollars over and above all his just debts and liabilities.

MAN'L RIONDA.
HUGH KELLY.

Sworn to this sixteenth day of September, A. D. 1884, before me—

[L. S.] WILLIAM P. LEGGATT,
Notary Public, Kings Co.

Cert. filed in N. Y. Co.

31 UNITED STATES OF AMERICA, *ss:*

To William H. Robertson, collector of the port of New York, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the third Monday of October term next, eighteen hundred and eighty-four, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of

New York, wherein James F. Whitney, Henry Buschmann, and Charles S. Whitney are the plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Dated 26th September, 1884.

WM. J. WALLACE.

32 [Endorsed:] U. S. Supreme Court. James F. Whitney, Henry Buschmann, and Charles S. Whitney, plaintiffs in error, against William H. Robertson, collector of the port of New York, defendant in error. Citation. U. S. circuit court. Filed Sep. 26, 1884. Timothy Griffith, clerk.

Due service of a copy of the within citation admitted.

Dated 26th Sept., 1884.

ELIHU ROOT,
Attorney for Defendant in Error.
CH'S STEWART DAVISON,
Proctor for Pl'ff's in Error, 33 Wall Street, New York City.

Endorsed on cover: S. New York C. C. U. S. No. 108. James F. Whitney, Henry Buschmann, and Charles S. Whitney, plaintiffs in error, *vs.* William H. Robertson, collector of the port of New York. Filed 16th October, 1884.